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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 33

INCRES STEAMSHIP COMPANY, LTD.,
Petitioner,

against

INTERNATIONAL MARITIME WORKERS UNION, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

AND

BRIEF OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AS *AMICUS CURIAE*

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Dated, New York, N. Y.
June 25, 1962.

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Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

The Government of the United Kingdom of Great Britain and Northern Ireland respectfully moves for permission to file a brief *amicus curiae* in the above-entitled action for the purpose of calling to this Court's attention its serious concern with a situation which, if permitted to continue, could well result in the interference with the international commerce and the free movement of merchant fleets of all maritime nations. Petitioner has consented to the filing of such a brief. Respondents have not.

The Government of the United Kingdom, as one whose flag flies over the second largest merchant fleet in the world, is directly interested to insure that its merchant fleet be free from interference by an American labor union or by a

labor union of any other foreign nation. Beyond the scope of international conventions and treaties, voluntarily entered into by free governments, it is solely within the domestic economy and the domestic law of each maritime national to establish the rules concerning the relationship amongst seamen, their officers and shipowners.

When the highest court of the State of New York apparently states its inability to prevent an American labor union from interfering with the internal relations between the foreign crew and foreign owner of a foreign flag vessel in a United States port because of a federal statute obviously intended to control only the relationship between United States employees and their employers, then this Government must submit its views to this Honorable Court.

For the foregoing reason it is respectfully requested that this motion be granted.

Respectfully submitted,

LAWRENCE HUNT, ESQ.,
Counsel for The Government of the
United Kingdom of Great Britain
and Northern Ireland.

Dated: June 25, 1962.

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BRIEF OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AS *AMICUS CURIAE*

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Statement

The Government of the United Kingdom of Great Britain and Northern Ireland does not seek to complain about the provisions of the Labor Management Relations Act or the manner in which that Act is interpreted by Federal or State Courts or by Federal Agencies in the United States so long as the labor and the management whose relations are in dispute are domestic. Nor has The Government of the United Kingdom any intention, and it is not the purpose of this brief, to interfere in the domestic affairs of another sovereign state. What does gravely

concern. The Government of the United Kingdom is when the activities of its merchant fleet and its right to engage freely in international trade with friendly nations are seriously threatened by the decision of the highest court of the State of New York. Apparently, that court held that the relations between a foreign crew and the foreign owner of a vessel which flew a foreign flag is *or might be* subject to the jurisdiction of the National Labor Relations Board and the provisions of the Labor Management Relations Act if the foreign flag vessel happened to call at a United States port with any degree of regularity.

Such a holding opposes the traditional internal economy doctrine long applied by all nations to foreign flag vessels temporarily in their ports. It gives an unwarranted extra-territorial effect to domestic law and, if sustained, would lead to strife and chaos in international trade when local labor unions at numerous ports of call picketed a vessel and sought to organize her crew under the local foreign equivalents of the Labor Management Relations Act. Indeed, it is directly opposed to the expressed purpose of that Act which is "to promote the free flow of commerce". To expose the crews of vessels to the enticements of competing labor unions in various countries and to expose shipowners to an equal number of jurisdictional disputes can only result in a marked reduction in the volume and free flow of international trade to the detriment of the United States and all nations of the world.

ARGUMENT

"Perhaps the most venerable and universal rule of Maritime Law relevant to our problem is that which gives cardinal importance to the law of the flag."

The foregoing quotation of this Honorable Court's opinion in *Lauritzen* v. *Larsen*, 345 U. S. 571, 584, epitomizes the position of the Government of the United Kingdom in the present case.

The law of the flag is not only a traditional doctrine in international maritime law but is also a practical, vitally useful rule, which, as clarified and strengthened in recent decisions of this Court, protects and promotes the free flow of international commerce.

This Court in the *Lauritzen* case stated that each state under international law has the right to determine the conditions under which it will permit a vessel to fly its flag and that only the registering state may question the regularity of a vessel's registration. It was also noted by this Court that there must be some law on shipboard and that the law cannot change as the vessel moves through the waters of numerous states. See also *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354.

From the practical point of view, it is imperative that this doctrine be preserved for it is common knowledge that different countries, because of natural resources or national talents, contribute in differing ways to the well-being of the countries of the word. It is also common knowledge that other nations supply the vessels which carry the bulk of the world's international commerce. Norway, for example, with a population of about three and a half million, contributes about twelve million gross tons of shipping to the carriage of cargoes in international trade while many nations supply practically no tonnage for the carriage of the world's cargoes. These maritime nations are busily engaged in carrying both dry and liquid cargoes to or from the ports of every friendly country and by so doing contribute greatly to the economic well-being of the community of nations. Many of their vessels rarely see their home ports, being bunkered, supplied and repaired at convenient ports throughout the world with relief crews being flown to ports of call of the vessel at regular intervals. Such vessels none the less are continuously subject to the law of their flag and the relations among crew, officers and owner are governed by that law. It would create a situation of unacceptable confusion having the most adverse effects on the internal discipline of such vessels and the rights and

duties of the crew, the officers and the owner if such relations were to change from port to port and sea to sea.

Moreover, the Government of the United Kingdom do not consider that they could properly claim that the crew of an American flag vessel which touched British ports with some degree of regularity should be subject to British labor standards and practices. It would be equally improper for the Government of the United States to suggest that the crew of a vessel flying the British or any other flag should be subject to the Labor Management Relations Act of the United States (29 U. S. C. Section 141 et seq.). Interference in the relations between foreign labor and foreign management on foreign flag vessels could not long remain an exclusively American privilege. Nor could it remain the exclusive privilege of any maritime nation. All maritime nations should bear in mind the wise words of this Court when it warned "of the necessity for mutual forbearance if retaliations are to be avoided". *Lauritzen* v. *Larsen*, 345 U. S. 571, 582.

This Court is of course aware that other leading maritime nations have laws regulating labor and management relations, laws which affect the seamen who man the vessels flying their flags, and that these laws in many, if not in all instances, long antedate our own.

As was said by this Court in *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 123, and quoted in the *Lauritzen* case:

> "And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require . . ."

The peace and dignity of the United States and the tranquillity of any one of her ports are not put in jeopardy by

permitting foreign flag vessels to resolve their labor-management relations in accordance with the law of the vessel's flag despite the temporary presence of that vessel at a United States port. The dignity of the country and the tranquillity of her ports will not be furthered by making her ports the arena within which the relations between foreign labor and foreign management are thrashed out.

The basic issues of this case cannot be obscured by the phrase "shuttle service", when such "shuttle service" is the prime object of the free flow of international commerce, based on the law of the flag. *Lauritzen* v. *Larsen*, 345 U. S. 571, 581. Moreover this Court is aware that the S.S. United States and the S.S. Queen Mary are both engaged in "shuttle service" (and that such vessels are owned by steamship lines having subsidiary offices in London and New York).

This Court clearly recognized in *Benz* v. *Compania Naviera Hidalgo*, 353 U. S. 138, 147, that it is not a judicial function "to run interference in such a delicate field of international relations", as presents itself in the relations of a foreign crew to a foreign owner. And relegating foreign shipowners to a federal agency because of the intrusion of an American labor union in the internal economy and discipline of a foreign vessel is "interference" never contemplated by the Congress of the United States, as this Court has forcefully pointed out. In the *Benz* case, this Court, referring to the Labor Management Relations Act, said (353 U. S. at 143-144):

> "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the Act is concerned with industrial strife between American employers and employees. In fact, no discussion in either House of Congress has been called to our attention from the thousands of pages of legislative history that indicates in the least that Congress intended the coverage of the Act to extend to circumstances such as those posed here. It appears not to have even occurred to those sponsoring the bill."

This language and quotation in that opinion by this Court of the House Committee on Education and Labor Report which described the then Bill as "a bill of rights both for *American* workingmen and for their employers" conclusively establish the lack of application of that Act by Congressional intent or judicial interpretation to the present case. The lower courts in the State of New York were therefore correct in directing an American labor union to keep its hands off foreign seamen serving aboard foreign flag vessels (which, in this case, are owned by foreign nationals).

It is submitted that the "arguably subject rule", set forth in *San Diego Building Trade Council Union* v. *Garmon*, 359 U. S. 236, is not applicable to the facts of this case, as Judge Fuld pointed out in his dissent in the New York Court of Appeals decision. It is the *Benz* case which controls. The relations between a labor union and a California lumber dealer are truly domestic. The relations between a ship's crew and her owner should continue to be governed by the law of the vessel's flag.

CONCLUSION

The Law of the Flag should control in this case. Therefore, the judgment of the Court of Appeals of the State of New York should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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